

### **Remarks**

Claims 1-8 were pending in this application. Claims 1, 6, and 7 are amended herein. No claims are added or canceled. No new matter is introduced by these amendments. After entry of this Amendment, **claims 1-8** remain pending in this application. Consideration and allowance of the pending claims is requested.

### ***Claim Rejections – 35 U.S.C. § 112***

Claims 1-8 are rejected under 35 U.S.C. § 112, second paragraph as allegedly indefinite in reciting “an ortholog thereof” with reference to SEQ ID NO: 2. Applicants request reconsideration in light of the amendments herein.

Applicants respectfully disagree that the phrase “an ortholog thereof” is indefinite. However, solely to advance prosecution, claims 1 and 6 are amended to remove this phrase. Applicants request withdrawal of the rejection under 35 U.S.C. § 112, second paragraph.

Claims 1-8 are rejected under 35 U.S.C. § 112, first paragraph as allegedly lacking adequate written description. The Office asserts that the specification does not identify any sequences or orthologs, other than the amino acid sequence of SEQ ID NO: 2, that produce a high oil phenotype. The Office also asserts that the specification does not provide any structural features that confer functional activity required to confer a high oil phenotype that would identify an ortholog of citrate synthase. Applicants request reconsideration in light of the amendments and statements made herein.

Claims 1 and 6 are amended herein to recite “a nucleotide sequence that encodes a citrate synthase polypeptide having at least 95% sequence identity with SEQ ID NO:2...” Support for this amendment may be found in the specification, for example, at page 8, lines 21-25. As indicated above, the phrase “an ortholog thereof” is removed.

The Written Description Training Materials (Revision 1, March 25, 2008) in Example 11A describe a specification disclosing a nucleic acid sequence encoding a polypeptide of SEQ ID NO: 2 and a claim reciting “an isolated nucleic acid that encodes a polypeptide with at least

85% amino acid sequence identity to SEQ ID NO: 2.” The training materials indicate that the disclosure of SEQ ID NO: 2 “combined with the pre-existing knowledge in the art regarding the genetic code and its redundancies would have put one in possession of the genus of nucleic acids that encode SEQ ID NO: 2. With the aid of a computer, one of skill in the art could have identified all of the nucleic acids that encode a polypeptide with at least 85% sequence identity with SEQ ID NO: 2.” The training materials go on to state that in such a situation, the specification satisfies the written description requirement.

The present situation is directly analogous to Example 11A. Applicants’ specification discloses the amino acid sequence SEQ ID NO: 2 and the claims recite “a nucleotide sequence that encodes a citrate synthase polypeptide having at least 95% sequence identity with SEQ ID NO:2...” Therefore, the specification provides adequate written description for the genus of nucleic acids that encode a polypeptide at least 95% identical to SEQ ID NO: 2. Furthermore, it would require merely routine experimentation in light of the teachings of the specification for one of skill in the art to make a polypeptide having at least 95% sequence identity with SEQ ID NO: 2 and determine whether it confers a high oil phenotype when over-expressed in a transgenic plant. Applicants therefore request withdrawal of the rejection under 35 U.S.C. § 112, first paragraph.

### **Conclusion**

Applicants respectfully submit that the claims are now in condition for allowance. If any issues remain, the Examiner is requested to contact the undersigned to arrange a telephonic interview prior to the preparation of any further written action.

Respectfully submitted,

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